

- (3) Whether claimant contracted an occupational disease arising out of and in the course of his employment with respondent.
- (4) Nature and extent of claimant's disability.

The parties acknowledge that the issue regarding what, if any, liability the Kansas Workers Compensation Fund may have in this matter was neither listed nor decided by the Administrative Law Judge. If it becomes necessary for the Appeals Board to decide this issue, the matter will be remanded to the Administrative Law Judge for further findings and conclusions. The Administrative Law Judge, although not specifically addressing the issues of notice and written claim, apparently found both in claimant's favor by implication of the award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record and, in addition, the stipulations of the parties, the Appeals Board finds as follows:

The Appeals Board finds the findings of fact listed by the Administrative Law Judge in her Award accurately set out appropriate facts in this matter. As such, the Appeals Board adopts same as its own without it being necessary to restate them in this Order.

In addition, the Appeals Board makes the following finding that claimant last worked for respondent on April 10, 1992 at which time he was caught with departmental cocaine in his possession. Claimant was charged with cocaine possession. Claimant's termination of employment stemming from this infraction actually occurred on April 17, 1992.

K.S.A. 44-5a17 states in part:

"If no claim for disability or death from an occupational disease be filed with the workmen's compensation director or served on the employer within one (1) year from the date of disablement or death, as the case may be, the right to compensation for such disease shall be forever barred: *Provided, however,* That the failure to file or serve a claim within the time limited herein shall be deemed waived unless objection to such failure be made at a hearing on such claim before any award or decision thereon."

Claimant's written claim was filed April 16, 1993. Claimant contends the date of claimant's disablement under the statute should be April 17, 1992, the date of claimant's termination. The disablement alleged in this matter deals with an occupational disease of cocaine addiction which claimant allegedly developed while employed with respondent. As claimant's last date of employment is April 10, 1992, his last possible date of disablement for purpose of written claim under the occupational disease statute would be April 10, 1992, with one year from that date being April 10, 1993. The Appeals Board finds, as claimant's written claim was not submitted until April 16, 1993, claimant has not met the required burden of filing with the Workers Compensation Director or serving on the employer within one year from the date of disablement or death a claim for disability from claimant's occupational disease. The Appeals Board further finds that this failure to serve claim within the time limit specified was raised at hearing and, as such, claimant's right to compensation for such occupational disease is forever barred. Having so found, the Appeals Board will not address the remaining issues raised by the parties.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl dated October 10, 1995 shall be reversed in that claimant is denied an award against the respondent, City of Wichita, as a qualified self-insured, for an alleged occupational disease as a result of claimant's failure to timely file written claim in this matter.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Alexander Reporting	
Deposition of Timothy Scanlan, M.D.	\$163.12
Deposition of Timothy Scanlan, M.D.	\$170.00
Ireland Court Reporting	
Transcript of regular hearing	\$341.70
Transcript of continuation of regular hearing	\$480.15
Deposition of Lieutenant Roger Williamson	\$489.68
Court Reporting Service	
Deposition of Roger E. Williamson	Unknown
Deposition of Ronald A. West	Unknown
Deposition of Philip Marceau	Unknown
Deposition of Mike Deiters	Unknown
Deposition of Roger Williamson	Unknown
Barber & Associates	
Deposition of Terry B. Fettke	\$496.00
Kim Marie Bannon, CSR	
Deposition of Michael Payne	Unknown

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Mark T. Schoenhofer, Wichita, KS
 David Morgan, Wichita, KS
 Scott Mann, Hutchinson, KS
 Shannon S. Krysl, Administrative Law Judge
 Philip S. Harness, Director